

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

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| In the matter of the amendment) | NOTICE OF PUBLIC HEARING ON |
| of 17.24.101, 17.24.102,) | PROPOSED AMENDMENT |
| 17.24.103, 17.24.104,) | |
| 17.24.106, 17.24.115,) | |
| 17.24.116, 17.24.117,) | |
| 17.24.118, 17.24.119,) | |
| 17.24.140, 17.24.146,) | |
| 17.24.167, and 17.24.184,) | |
| pertaining to the Metal Mine) | |
| Reclamation Act) | |

TO: All Concerned Persons

1. On August 5, 2002 at 1:00, p.m., the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., July 24, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386 or email "ber@state.mt.us".

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.24.101 GENERAL PROVISIONS (1) through (4) remain the same.

(5) The Act and this subchapter do not apply to a person engaging in a mining activity described in 82-4-310(1) and (2), MCA, ~~or to a person who, on land owned or controlled by that person is allowing other persons to engage in mining activities as provided in 82-4-310(3), MCA.~~ The Act and this subchapter apply to a person who, on land owned or controlled by that person, is allowing other persons to engage in mining activities whose activities cumulatively exceed the activity described in 82-4-310(1).

(6) through (8) remain the same.

AUTH: 82-4-321, MCA

IMP: 82-4-305, 82-4-309, 82-4-331, 82-4-332, 82-4-335, 82-4-361, 82-4-362, MCA

17.24.102 DEFINITIONS As used in the Act and this subchapter, the following definitions apply:

(1) and (2) remain the same.

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~~(3) "Amendment" is defined in 82-4-303(2), MCA, and means, for the purposes of this subchapter, a change in an approved plan of operations that is not a revision.~~

~~(4) "Board" means the board of environmental review, as provided for in 2-15-3502, MCA, or an agency or state employee that may succeed to its powers and duties under the Act.~~

(5) and (6) remain the same, but are renumbered (3) and (4).

~~(7)~~ (5) "Collateral bond" means an indemnity agreement for a fixed amount, payable to the department, executed by the operator and supported by the deposit with the department of cash, negotiable bonds of the United States (not treasury certificates), state or municipalities, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized or authorized to transact business in the United States or other surety acceptable to the department.

~~(8)~~ (6) "Disturbed and unreclaimed surface" means, as used in the definition of "small miner" and ARM 17.24.101(4), land affected by mining activities, including reprocessing of tailing or waste material, that has not been restored to a continuing productive use, with proper grading and revegetative revegetation procedures to assure:

(a) through (d) remain the same.

(9) remains the same, but is renumbered (7).

~~(10)~~ (8) "Exploration" ~~means all activities conducted on or beneath the surface resulting in material disturbance of the surface, for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, except as noted in 82-4-310, MCA. Included in this definition are roads constructed for the purpose of facilitating exploration and includes pilot ore processing plants or sites and associated facilities constructed for the sole purpose of metallurgical or physical testing of ore materials, not to exceed 10,000 short tons, to aid in determining the development potential of an ore body.~~

~~(11) "Major amendment", as defined in 82-4-303(2), MCA, means an amendment that may have significant impact on the human environment.~~

~~(12) "Mineral" means any ore, rock or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, scoria or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, leaching, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement or smelting.~~

~~(13) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of 10,000 short tons.~~

~~(14) "Minor amendment", as defined in 82-4-303(2), MCA, means an amendment that will not significantly affect the human environment.~~

(15) remains the same, but is renumbered (9).

(a) and (b) remain the same.

(c) Work camps are not required to be permitted. (However, they are regulated under the Water Quality Act Title 75, chapter 5, MCA.)

~~(16) "Person" means any person, corporation, firm, association, partnership or other legal entity engaged in exploration or mining of minerals on or below the surface of the earth, reprocessing of tailing or waste materials, or operation of a hard rock mill.~~

~~(17) (10) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons. This definition includes, but is not limited to, mining by hydraulic giant, ground sluice, rocker or sluice box methods, the use of a dry land dredge, trommel or washing plant, and bucket type floating dredges, all as referred to in Mining Methods and Equipment Illustrated, Montana Bureau of Mines and Geology, Bulletin 63, 1967.~~

~~(18) (11) "Plan of operations" means the plans required under 82-4-335 through 82-4-337, MCA, including the reclamation plan defined in 82-4-303, MCA, plus the approved operating, monitoring and contingency plans required in an application for an operating permit.~~

(19) remains the same, but is renumbered (12).

~~(20) (13) "Reclamation" means the return of lands disturbed by mining or mining-related activities to an approved postmining land use which has stability and utility comparable to that of the premining landscape except for rock faces and open pits which may not be feasible to reclaim to this standard. Those rock faces and open pits must be reclaimed in accordance with 82-4-336, MCA. The term "reclamation" does not mean restoring the landscape to its premining condition. Reclamation, where appropriate, may include, but is not limited to, neutralizing cyanide or other processing chemicals; closure activities for ore heaps, waste rock dumps, and tailing impoundments; closure activities for surface openings; grading, soiling and revegetating disturbed lands; removal of buildings and other structures; and salvage of buildings; other steps necessary to assure long-term compliance with Title 75, chapters 2 and 5, MCA; and other steps necessary to protect public health and safety at closure.~~

(21) through (24) remain the same, but are renumbered (14) through (17).

~~(25) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including, but not limited to, open pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining shall not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, scoria or uranium nor excavation or~~

~~grading conducted for on site farming, on site road construction, or other on site building construction.~~

AUTH: 82-4-321, MCA

IMP: 82-4-303, 82-4-305, 82-4-309, 82-4-310, 82-4-331(2), MCA

17.24.103 EXPLORATION LICENSE--APPLICATION AND CONDITIONS (1) To secure an exploration license ~~a person an applicant~~ shall:

(a) pay a filing fee of ~~\$5~~ \$100 to the department;

(b) remains the same.

(c) submit an exploration plan of operations and a map or sketch in sufficient detail to locate the area to be explored as well as the actual proposed disturbances, and to allow the department to adequately determine whether significant environmental problems would be encountered. The ~~applicant shall state in the plan of operations what must state the~~ type of exploration techniques ~~that~~ would be employed in disturbing the land. ~~The application shall also and~~ include a reclamation plan in sufficient detail to allow the department to determine whether the specific reclamation and performance requirements of ARM 17.24.104 through 17.24.107 would be satisfied;

(d) and (e) remain the same.

(f) not be in default of any other reclamation obligation mandated by the Act or rules ~~and~~ implementing the Act.

(2) On approval by the department, the applicant will be issued an exploration license renewable annually ~~on application by filing an annual report on a form provided by the department~~ and payment of the renewal fee of \$25. ~~The license must not be renewed if the applicant is held by the department to be in any violation of the Act or rules and regulations promulgated by the board.~~

(3) and (4) remain the same.

AUTH: 82-4-321, MCA

IMP: 82-4-332, MCA

17.24.104 EXPLORATION (TEMPORARY) ROADS (1) and (2) remain the same.

(3) No road may be constructed up a stream channel proper or so close that material will spill into the channel. Minor alterations and relocations of streams may be permitted if the stream will not be blocked and if no damage is done to the stream or adjoining landowners. No alteration ~~which that~~ affects more than 100 linear feet of the channel of a flowing stream may be approved by the department without advice from the department of fish, wildlife and parks. ~~The department of environmental quality must also be consulted regarding Any stream channel alterations to ensure compliance must comply with the Montana Water Quality Act (Title 75, chapter 5, MCA) as amended.~~

(4) through (11) remain the same.

~~(12) When sideslopes are 15% or less, vegetative debris from clearing operations must be completely disposed of or stockpiled at specific areas. On sideslopes steeper than 15% such vegetative debris must be piled neatly parallel to and below the toe of the fill.~~

(13) through (17) remain the same, but are renumbered (12) through (16).

AUTH: 82-4-321, MCA

IMP: 82-4-332, MCA

17.24.106 EXPLORATION DRILL HOLE PLUGGING (1) through (3)(d) remain the same.

(4) All flowing or artesian drill holes must be plugged prior to removing the drill rig from a hole unless removing the drill rig is necessary to the hole plugging operation. If the flow is not completely stopped, after exhaustion of all methods, the operator must:

(a) remains the same.

(b) develop a water well in compliance with the requirements of other applicable local, state and federal statutes, including water rights. In addition, the land owner must concur, the amount and use of flow must be compatible with the approved postmining land use, and the water quality must meet standards set under ~~the Water Quality Act Title 75, chapter 5, MCA.~~

(5) remains the same.

AUTH: 82-4-321, MCA

IMP: 82-4-302, 82-4-332, 82-4-355(2)(b), MCA

17.24.115 OPERATING PERMITS: RECLAMATION PLANS (1) ~~The definition of reclamation plan (82-4-303(14)(a), MCA) lists 9 considerations which "to the extent practical at the time of application" must be included in the plan. Using the same letter headings as in the above referenced definition, the~~ The following are the standards for each of the required provisions that must be included addressed in the reclamation plan:

(a) through (b) remain the same.

~~(c) To the extent reasonable and practicable, the The operator must establish vegetative cover commensurate with the proposed land use specified in the reclamation plan. Should an initial revegetation attempt be unsuccessful, the operator must seek the advice of the department and make another attempt. The second revegetation operation, insofar as possible, shall incorporate new methods necessary to reestablish vegetation.~~

(d) Where operations result in a need to prevent acid drainage or sedimentation, on or in adjoining lands or streams, there shall be provisions for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of such impoundments or

devices shall not interfere with other landowner's rights or contribute to water pollution (as defined in the ~~Montana Water Pollution Control Act Title 75, chapter 5, MCA as amended~~).

~~(e) The plan must provide that all~~ All water, tailings or spoil impounding structures must be equipped with spillways or devices that will protect against washouts during a 100-year flood.

~~(f) All applicants must comply with all applicable county, state and federal laws regarding solid waste disposal. All refuse shall be disposed of in a manner that will prevent water pollution or deleterious effects upon the revegetation efforts.~~

(g) remains the same, but is renumbered (f).

~~(h) All access, haul and other support roads shall be located, constructed and maintained in such a manner as to control and minimize channeling and other erosion.~~

(i) remains the same, but is renumbered (g).

~~(j) Archaeological and historical values in area to be developed shall be given appropriate protection.~~

~~(k) Provisions shall be made to avoid accumulation of stagnant water in the development area which may serve as a host or breeding ground for mosquitoes or other disease bearing or noxious insect life.~~

~~(l) All final grading shall be made with non noxious, nonflammable, noncombustible solids unless approval has been granted by the department for a supervised sanitary fill.~~

(m) and (n) remain the same, but are renumbered (h) and (i).

~~(o) The plan must describe the location of the surface water diversions as well as the methods of diverting surface water around the disturbed areas. Properly protected culverts, conduits or other artificial channels may carry surface water through the disturbed areas providing such procedures prevent pollution of such waters and unnecessary erosion.~~

(p) through (r) remain the same, but are renumbered (j) through (l).

(m) All facilities constructed as part of the operating permit must be reclaimed for the approved post mine land use. The reclamation plan must provide for removal of buildings and other structures at closure consistent with the post mine land use.

(n) The plan must provide for post mine environmental monitoring programs and contingency plans for the post reclamation permit area.

AUTH: 82-4-321, MCA

IMP: 82-4-303, 82-4-335, 82-4-336, MCA

17.24.116 OPERATING PERMIT: APPLICATION REQUIREMENTS

(1) remains the same.

(2) To obtain an operating permit the applicant shall:

~~(a) pay a \$25.00~~ \$500 fee.

~~(b) indicate proposed date for commencement of mining and minerals to be mined;~~

~~(c) provide a map to scale of the mine area and area to be disturbed (such map will locate and identify streams, and proposed roads, railroads and utility lines in the immediate area);~~

~~(d) submit a plan of mining which will provide, within limits of normal operating procedures of the industry, for completion of mining and associated land disturbances;~~

~~(e) provide a reclamation plan that meets the requirements of 82-4-336, MCA, and this subchapter.~~

(3) In addition to the information required by 82-4-335(4), MCA, an application for an operating permit must describe the following:

(a) the existing environment;

(b) soil salvage and stockpiling activities and measures to protect soil from erosion and contamination;

(c) provisions for the prevention of wind erosion of all disturbed areas;

(d) the design, construction, and operation of the mine, mill, tailings, and waste rock disposal facilities;

(e) the facilities, buildings and capacity of mill or processing;

(f) the proposed date for commencement of mining, the minerals to be mined and a proposed conceptual life of mine operations;

(g) the designs of diversions, impoundments and sediment control structures to be constructed reflecting their safety, utility and stability;

(h) the location of access, haul and other support roads and provisions for their construction and maintenance that control and minimize channeling and other erosion;

(i) the source and volume of incoming ore, tailings, or waste rock;

(j) the equipment and chemicals to be used in the operation by location and task;

(k) the general chemical processes and the purpose, amount, and source of water used in the operation and the disposition of any process waste water or solutions;

(l) the ground and surface water monitoring programs to be implemented and a contingency plan addressing accidental discharges to ground or surface water;

(m) a fire protection plan;

(n) a toxic spill contingency plan with certification that notice of the filing of the plan has been provided to the state fire marshall;

(o) the sewage treatment facilities and solid waste disposal sites;

(p) the power needs and source(s), including fuel storage sites;

(q) the anticipated employment including direct and onsite contract employees;

(r) the transportation network to be used during the construction and operation phases, including a list of the type and amount of traffic at mine or mill capacity;

(s) the predicted noise levels by activities during construction and operations;

(t) the protective measures for archaeological and historical values in the areas to be mined;

(u) the protective measures for off-site flora and fauna.

(4) The application must include a map or maps to scale of the mine area and area to be disturbed (such map must locate the proposed mine and facilities and must locate and identify streams, and proposed roads, railroads and utility lines in the immediate area and residences and wells within one mile of the permit area). All maps provided in the application must have a uniform base, a scale, and a north directional arrow.

(5) The application must include a reclamation plan that meets the requirements of 82-4-336, MCA, and this subchapter.

AUTH: 82-4-321, MCA

IMP: 82-4-336, MCA

17.24.117 OPERATING PERMIT CONDITIONS (1) The following conditions accompany the issuance of each permit:

(a) The permittee shall conduct all operations as described:

(i) in the plan of operations including the approved operating, reclamation, monitoring and contingency plans; and

(ii) in any express conditions which the department places on the permit to ensure compliance with the Act or this subchapter promulgated pursuant thereto; and

(iii) in written commitments made by the permittee in response to deficiencies identified by the department during the permit application review process;

(iv) in mitigation measures mutually developed by the department and permittee pursuant to 75-1-201(5)(b), MCA;

(v) in the most recent reclamation bond calculations.

(b) and (c) remain the same.

AUTH: 82-4-321, MCA

IMP: 82-4-335, 82-4-336, 82-4-351, MCA

17.24.118 OPERATING PERMIT ANNUAL REPORT (1) Each permittee shall file ~~copies of~~ an annual report with the department and pay an annual fee of \$100 within a time period specified in 82-4-339, MCA, until such time as full bond is released. No less than 30 days prior to the permit anniversary date for the annual report, the department shall notify the permittee in writing that an annual report and renewal fee is due.

(2) The annual report must include the information outlined under 82-4-339, MCA. In addition, ~~beginning with the~~

~~first full permit year after the effective date of these rules, the annual report must include:~~

- ~~(a) remains the same.~~
- ~~(b) the extent of backfilling and grading performed during the preceding year and cumulatively; and.~~
- ~~(c) maps showing the information required in (a) and (b) above.~~

~~(3) Each annual report must include a status report on revegetation, pursuant to 82-4-339(1)(f)(iv) and (vi), MCA, which includes the extent of reclamation (seeding or planting) performed during the preceding year (in narrative and map form), including:~~

- ~~(3)(a) through (e) remain the same, but are renumbered (2)(c) through (g).~~

~~(f) (h) cumulative acres reseeded to date; and~~
~~(g) (i) cumulative acres of completed reclamation and the date each increment was completed; and~~

~~(j) maps showing the information required in (2)(a) through (i) above.~~

~~(4) through (13) remain the same, but are renumbered (3) through (12).~~

~~(14) (13) The department shall, by certified mail, notify a permittee, who fails to file an annual report and fee as required by this rule, that, the permit will be suspended if the report is and fee are not filed within 30 days of receipt of the notice, the permit must be suspended unless a 30-day extension is granted by the department.~~

~~(15) (14) If a permittee fails to file an annual report and fee within 30 days of receipt of a notice pursuant to (13) of this rule or within a 30-day extension granted by the department, the department shall suspend the permit.~~

AUTH: 82-4-321, MCA

IMP: 82-4-335, 82-4-336, 82-4-337, 82-4-338, 82-4-339, 82-4-362, MCA

17.24.119 PERMIT AMENDMENTS (1) An application for a major amendment must:

- ~~(a) and (b) remain the same.~~
- ~~(c) provide replacement pages in the approved plan of operations necessary to provide adequate cross referencing to supplemental designs or plans;~~
- ~~(d) through (f) remain the same, but are renumbered (c) through (e).~~

~~(2) through (4) remain the same.~~

AUTH: 82-4-321, MCA

IMP: 82-4-337, 82-4-342, MCA

17.24.140 BONDING: DETERMINATION OF BOND AMOUNT

(1) The department shall require submission of bond in the amount of the estimated cost to the department if it had to perform the reclamation, contingency procedures and associated monitoring activities required of an operator

subject to bonding requirements under the Act, the rules adopted thereunder, and the permit, license or exclusion. This amount is based on the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, the Act, the rules adopted thereunder, and the approved permit, license or any exclusion and shall include:

(a) through (3) remain the same.

(4) The line items in the bond calculations are estimates only and are not limits on spending of any part of the bond to complete any particular task.

(4) and (5) remain the same, but are renumbered (5) and (6).

AUTH: 82-4-321, MCA

IMP: 82-4-338, MCA

17.24.146 BONDING: LETTERS OF CREDIT (1) The department may accept as a bond a letter of credit subject to the following conditions:

(a) and (b) remain the same.

(c) The letter must be payable to the department in part or in full upon demand and receipt from the department of a notice that the person has failed to comply with a provision of the Act, the rules adopted thereunder, or the permit, license or exclusion, the failure of which authorizes forfeiture of the bond under the Act. ~~of forfeiture issued pursuant to 82-4-341, MCA.~~

(d) through (2) remain the same.

AUTH: 82-4-321, MCA

IMP: 82-4-338, 82-4-341, 82-4-360, MCA

17.24.167 MILLS: OPERATING PERMIT APPLICATION (1) remains the same.

(2) Prior to receiving an operating permit, the applicant must:

(a) pay a ~~\$25.00~~ \$500 filing fee to the department unless the mill application is associated with and submitted concurrently with a new operating permit application submitted under 82-4-335, MCA;

(b) indicate the proposed date for commencement of milling and the minerals to be milled and the conceptual life of the mill;

(c) ~~provide a detailed map using a USGS topographic base to scale of 1" = 400' or less, for the mill area and area to be disturbed. The map must locate and identify streams and proposed roads, railroads, conveyors, and utility lines in the immediate area~~ provide a map or maps to scale of the mill area (such map must locate the proposed mill and must locate and identify streams, and proposed roads, railroads and utility lines in the immediate area and residences and wells within one mile of the permit area). All maps provided in the application must have a uniform base, a scale, and a north directional arrow;

- (d) file a reclamation bond pursuant to 82-4-338, MCA;
 - (e) file ~~an operating~~ a plan of operation including construction, operating, monitoring and contingency plans; and
 - (f) file a reclamation plan.
- (3) remains the same.

AUTH: 82-4-321, MCA

IMP: 82-4-335, MCA

17.24.184 SMALL MINER BOND FORFEITURE AND SMES REVOCATION (1) through (6) remain the same.

- (7) A forfeited bond must be used as follows:

(a) remains the same.

(b) Whenever the department documents in a written finding that reclamation cannot be achieved using the amount of the forfeited bond, funds may be deposited in the ~~hard rock mining~~ environmental rehabilitation and response account established by 82-4-311, MCA, and reclamation must be conducted as priorities and additional funding allow. Forfeited funds deposited in the account may not be used for reclamation of other sites.

(c) remains the same.

AUTH: 82-4-321, MCA

IMP: 82-4-305~~(4)~~, ~~(5)~~ and ~~(6)~~, MCA

REASON: The Board is proposing the above rule amendments to conform the rules to two revisions of the Metal Mine Reclamation Act (82-4-301, et seq., MCA, hereinafter referred to as the Act) by the 2001 Montana Legislature. Chapter 488, Laws of 2001, in part, increased application and renewal fees for exploration licenses and operating permits; allows for bond forfeiture in the event that a permittee or licensee causes an imminent danger to public health, safety, or the environment and fails to abate the danger; and requires bonding in an amount not less than the estimated cost to assure compliance with Title 75, chapters 2 and 5, in addition to the provisions of the Act, rules adopted under the Act, and the approved operating permit. Chapter 338, Laws of 2001, established an environmental rehabilitation and response account in the state special revenue fund for deposit of all fees, fines and penalties paid to the Department under the Act.

Proposed rule amendments specify information that is required to be included in a reclamation plan and an application for an operating permit, implementing 82-4-303(14) and 82-4-335(4), MCA, respectively. In addition, rule amendments provide that commitments made by a permittee during the application, environmental review and bond calculation processes become a condition of the permit. Another proposed rule amendment conforms a bonding provision with statutory language. Finally, proposed rule amendments delete provisions that repeat statutory language or clarify, make consistent, or improve the readability of the rules.

17.24.101: As presently written, (5) provides that the Act does not apply to a person who, on land owned or controlled by that person, is allowing other persons to engage in mining activities as provided in 82-4-310(3), MCA, which is also phrased in the negative. The presence of the double negative makes application of the rule difficult. The proposed amendment to (5) clarifies that the Act does apply to a landowner that allows mining by others whose operations exceed the criteria set forth in 82-4-310(1), MCA.

17.24.102: The proposed amendment deletes the following definitions that are verbatim repetitions of terms defined by statute:

Subsection (3) repeats the definition of "amendment" set forth in 82-4-303(2), MCA;

Subsection (4) repeats the definition of "board" set forth in 82-4-303(3), MCA;

Subsection (10) repeats the definition of "exploration" set forth in 82-4-303(7), MCA;

Subsection (11) repeats the definition of "major amendment" set forth in 82-4-303(2), MCA;

Subsection 12 repeats the definition of "mineral" set forth in 82-4-303(8), MCA;

Subsection 13 repeats the definition of "mining" set forth in 82-4-303(9), MCA;

Subsection 14 repeats the definition of "minor amendment" set forth in 82-4-303(2), MCA;

Subsection 16 repeats the definition of "person" set forth in 82-4-303(11), MCA;

Subsection 17 repeats the definition of "placer or dredge mining" set forth in 82-4-303(13), MCA; and

Subsection 25 repeats the definition of "surface mining" set forth in 82-4-303(17), MCA, and "mineral" set forth in 82-4-303(8), MCA.

Additionally, the proposed amendment to (7) adds the phrase "or other surety acceptable to the department" to make the definition of "collateral bond" consistent with 82-4-338(1), MCA. The proposed amendment to (8) improves grammatical style and the proposed amendment to (15)(c) refers to the Water Quality Act by citation for consistency with other rules and the Act.

The proposed amendment to (18) defines "plan of operations" to include operating, monitoring and contingency plans. An applicant is already required to develop and include in its application operating, monitoring and contingency plans under 82-4-335(4), MCA, and ARM 17.24.116. The express inclusion of operating, monitoring and contingency plans in the definition of "plan of operations" in tandem with the proposed amendment to ARM 17.24.117(1)(a)(i) is meant to emphasize that the operating, monitoring and contingency plans become enforceable components of the permit.

The proposed amendment to (20) adds the adjective "ore" to "heaps" for clarification purposes. It also substitutes "removal of buildings and other structures" for "salvage of buildings." Defining reclamation to include "salvage of

buildings" is too narrow because it pertains only to buildings that have salvage value and does not address buildings with no salvage value and other facilities.

17.24.103: The proposed amendment to (1) changes the phrase "a person" to "an applicant" for consistency. The proposed amendment to (1)(a) reflects the increase in the fee for issuance of an exploration license enacted by Chapter 488, Laws of 2001. The proposed amendment to (1)(c) improves its readability. The proposed amendment to (2) sets forth the amount of the renewal fee as enacted by Chapter 488, Laws of 2001. The proposed amendment also requires submission of an annual report on a form provided by the Department, a codification of long-standing practice. The submission of an annual report enables the Department to maintain contact with the licensee and be apprised of the activity conducted by the licensee in the previous twelve-month period. Finally, the proposed amendment to (2) deletes a provision that is redundant to 82-4-331(3), MCA.

Because the increase in exploration license application fees is mandated by statute, the Board does not have discretion to maintain the fees at the present level. The Department receives approximately 10 applications annually. The cumulative amount resulting from the increase (\$5 to \$100) is approximately \$950.

Because the increase in exploration license renewal fees is mandated by statute, the Board does not have discretion to maintain the fees at the present level. Approximately 100 exploration licenses are renewed annually. The cumulative amount resulting from the increase (\$5 to \$25) is approximately \$2000.

17.24.104: The salient requirement of (3) is compliance with the Water Quality Act rather than consultation with the Department. This is reflected in the proposed amendment to (3). Additionally, the proposed amendment to (3) makes the citation to the Water Quality Act consistent with other citations to the Water Quality Act found elsewhere in the rules. The proposed amendment to (12) deletes language that is repetitious to that contained in (9).

17.24.106: The proposed amendment to (4)(b) refers to the Water Quality Act by citation for consistency with other rules and the Act.

17.24.115: The proposed amendment to (1) deletes reference to the structure of 82-4-303(14)(a), MCA, to which the current rule and the proposed amendments do not adhere.

The proposed amendment to (1)(c) clarifies that a reclamation plan must require the establishment of vegetative cover and permanent landscaping pursuant to 82-4-336(8) and (12), MCA. As currently drafted, (1)(c) implies that an operator is required to make only two efforts to establish vegetation, even if the second effort also fails. The proposed amendment to (1)(d) refers to the Water Quality Act by citation for consistency with other rules and the Act. The proposed amendment to (1)(e) removes superfluous language.

The proposed amendments to (1)(f), (h), (j) and (o) delete requirements that are not relevant to a reclamation plan. The provisions, however, are relevant to a plan of operation. As discussed below, proposed amendments incorporate, with some modifications, the provisions of (1)(f), (h), (j), and (o) to Rule 17.24.116, which specifically addresses operating permit application requirements.

The proposed elimination of (1)(k) and (l) delete provisions that are redundant to 82-4-336(5) and (6), MCA, respectively. The proposed amendment adding subsection (n) requires a reclamation plan to provide for reclamation of facilities and removal of structures consistent with the post mine land use, implementing 82-4-303(14)(a) and (b), MCA. The proposed amendment to (1)(o) requires a reclamation plan to provide for post mine environmental monitoring programs, implementing 82-4-336(10), MCA.

17.24.116: The proposed amendment to (2)(a) reflects the increase in the fee for issuance of an operating permit enacted by Chapter 488, Laws of 2001. The proposed amendments also delete (2)(b), (c), (d) and (e). The provisions of these subsections have been transferred, with some modifications, to (3), (4), and (5), respectively, for organizational purposes. Under the proposed amendments to this rule, (2) will address the application fee, (3) will address the substantive information that must be set forth in an application, (4) will address maps required in an application, and (5) will address the reclamation plan required in an application. Because the increase in operating permit application fees is mandated by statute, the Board does not have discretion to maintain the fees at the present level. The Department receives approximately 1 application annually. The cumulative amount resulting from the increase (\$100 to \$500) is approximately \$400.

The proposed amendments adding (3)(d), (g), (h), (l), and (o) transfer information requirements, with some modification, that previously were inappropriately included in Rule 17.24.115 pertaining to reclamation plans. The proposed rule amendments adding (3)(a), (b), (c), (e), (f), (i), (j), (k), (m), (n), (o), (q), (r), (s), (t), and (u) require additional information that an applicant is required to include in an application for an operating permit, implementing 82-4-335(4), MCA. The additional information is needed to evaluate impacts to air and water quality during operation and following reclamation, to ensure public safety, and for use in the Department's MEPA analysis of the proposed operation. The proposed amendment adding (f) requires information that previously was required in (2)(b), (c), and (d). These proposed rule amendments organize and codify information that historically has been required of applicants for operating permits.

The proposed amendment adding (4) clarifies the mapping requirements in an application for an operating permit that previously was contained in (2)(d). The proposed amendment to

(5) adds language to correct the grammatical style of the provision that previously was contained in (2)(e).

17.24.117: The proposed amendment to (1)(a)(i) reflects the additional information that is included in a plan of operation pursuant to the proposed amendments to ARM 17.24.116(3).

The proposed amendments adding (1)(a)(iii), (iv) and (v) incorporate into the permit written commitments made by the permittee during the application, environmental review and reclamation bond calculation processes and approved by the Department. The proposed amendment would make enforceable the commitments made by the permittee and relied upon by the Department in issuing the permit even if the permit itself has not been updated to reflect the commitments. The amendment is necessary to ensure protection of the environment during operation of the mine and through reclamation.

17.24.118: The proposed amendment to (1) specifies the amount of the annual renewal fee for an operating permit required by Chapter 488, Laws of 2001. The proposed amendment also requires the notice issued by the Department to contain a statement of the annual fees so that the notice covers all annual obligations of the permittee under 82-4-339(1), MCA. Because the increase in operating permit renewal fees is mandated by statute, the Board does not have discretion to maintain the fees at the present level. Approximately 75 operating permits are renewed annually. The cumulative amount resulting from the increase (\$25 to \$100) is approximately \$5625.

The proposed amendments to (2) and (3) consolidate into (2) all information required in an annual report regarding land affected by the operation (either mining or reclamation activities). Specifically, provisions previously set forth in (3) (a) through (e) are now renumbered (2)(c) through (g). Additionally, (2)(c) has been renumbered (2)(j) so that mapping requirements may relate to information required by (2)(a) through (i). Finally, the amendments remove language from (2) that is no longer pertinent as that provision of the rule has been in effect for more than one year and (3) that is redundant to the consolidated provisions.

Finally, the proposed amendments to (14) and (15) clarify that the renewal fee must be filed to avoid suspension of the permit in addition to the annual report and make other changes to improve readability. The amendments also allow the Department to grant a 30-day extension for filing the annual report and renewal fee pursuant to 82-4-339, MCA, which provides that a date for the filing of the annual report may be set by rule that is later than the 30 days specified by statute.

17.24.119: The proposed amendment deletes (1)(c) because its provisions are redundant to (1)(b).

17.24.140: The proposed amendment to (1) conforms the rule provision for determining the amount of the bond to the statutory amendment enacted by Chapter 488, Laws of 2001. The

amendment is necessary to ensure the department of the full bonding authority contemplated by that statute.

The actual cost to complete each component task of reclamation may be more or less than the bond calculation for that task. The proposed amendment to (4) specifies that the total amount of the bond may be spent even if the actual cost of some component tasks are less than that calculated. The amendment assures the Department of the use of the full amount of the bond, if required to complete reclamation. The amendment is necessary to ensure that the Department has adequate bond to complete reclamation.

17.24.146: The proposed amendment to (1)(c) facilitates the forfeiture of a letter of credit whenever any violation is committed that warrants forfeiture under the Act. This amendment ensures that the Department is able to forfeit a letter of credit for a failure to abate an imminent danger as provided by Chapter 488, Laws of 2001, in addition to Section 82-4-341, MCA.

17.24.167: The proposed amendment to (1)(a) reflects the increase in the fee for issuance of an operating permit enacted by Chapter 488, Laws of 2001.

The proposed amendments to (1)(b), (c), and (e) implement 82-4-335(4), MCA, and require additional information to be set forth in a mill operating permit application. Information regarding the conceptual life of the mill, the location of residences and wells within one mile of the permit boundary, and the construction, operating, monitoring and contingency plan are needed to evaluate the impacts of the mill operation. Additionally, the proposed amendment makes the mapping information required in a mill operating permit application consistent with the mapping requirements for a mine operating permit application.

17.24.184: The proposed amendment to (7)(b) reflects the enactment of Chapter 338, Laws of 2001, establishing the environmental rehabilitation and response account for the placement of all fees, fines and penalties collected under the Act.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at "ber@state.mt.us" and must be received no later than 5:00 p.m., August 12, 2002. To be guaranteed consideration, the comments must be postmarked on or before that date.

5. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list

shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA, underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at "ber@state.mt.us" or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

BOARD OF ENVIRONMENTAL REVIEW

By:

JOSEPH W. RUSSELL, M.P.H.,
Chairperson

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State, [date].